

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM MAYO,	:	No. 1:18-CV-0878
Plaintiff	:	
	:	Chief Judge John E. Jones, III
v.	:	
	:	Electronically Filed Document
JOHN E. WETZEL,	:	
Defendant	:	<i>Complaint Filed 04/23/18</i>

MOTION FOR LEAVE TO FILE A SECOND
MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes the Defendant, through his undersigned counsel, who respectfully petitions this Court for leave to file a second motion for partial summary judgment. In support thereof, the following is averred:

1. The Plaintiff filed a complaint under 42 U.S.C. § 1983. *See* Complaint.
2. Following the close of discovery, the Defendant moved for summary judgment. Doc. 44.
3. The Defendant's motion was intended to encompass all claims brought by the Plaintiff. *See, e.g.*, Doc. 44-1 (proposed order asking for summary judgment to be granted and for the case to be closed).
4. On October 27, 2020, this Court issued a memorandum and order, granting in part and denying in part the Defendant's motion for summary judgment. Doc. 59.

5. The Court determined that the “Defendant fail[ed] to address the conditions of confinement claim in his motion.” *Id.* at p. 10.
6. Respectfully, the undersigned did not read the Plaintiff’s Complaint as containing a separate conditions of confinement Eighth Amendment claim, as the Plaintiff raised complaints about his mental health and medical treatment under the Eighth Amendment, which the Court addressed in its memorandum. *Id.* at pp. 10-13.
7. Indeed, the Court held that “No reasonable factfinder could conclude from the record before us that Wetzel acted with deliberate indifference to Mayo’s psychiatric needs.” *Id.* at p. 13.
8. Given the intent of the Defendant to move for summary judgment on all claims, and the interrelated nature of the Plaintiff’s Eighth Amendment claim that was addressed on summary judgment and the one that was inadvertently not, the Defendant respectfully requests that this Court grant leave to file a second motion for summary judgment, limited to the Plaintiff’s conditions-of-confinement claim.

WHEREFORE, for the foregoing reasons, the Defendant respectfully requests that this Court grant him leave to file a second partial motion for summary judgment.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

By: *s/ Caleb Curtis Enerson*

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Date: October 29, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2020, I caused to be served a true and correct copy of this document via hand delivery through staff at the DOC. This method of service is being used as a result of COVID.

s/Caleb C. Enerson
CALEB C. ENERSON
Deputy Attorney General

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ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of the MOTION FOR LEAVE TO FILE A SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT, it is ORDERED that the MOTION is GRANTED. The Defendant shall file his second motion for summary judgment, with any supporting documentation, within 14 days.

JOHN E. JONES, III
Chief Judge
Middle District of Pennsylvania